

CONSUMER GRIEVANCE REDRESSAL FORUM

(Established under the section 42 (5) of the Electricity Act, 2003)

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.

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No. / CGRF /Nashik/Malegaon Circle /Malegaon/600/76/16-17/

Date: 11/04/2017

(BY R.P.A.D.)

In the matter of

Application of Tariff Category LT-X since August 2012

Date of Submission of the case :27/02/2017

Date of Decision :11/04/2017

To.

1. M/s. Vinchurkar-Pawar Diagnostic Centre
S. No. 335 A ,Plot No. 4
Ramtek,Near LIC Colony
Camp Road, Malegaon
Dist : Nashik 423203.
(Consumer No. 065511384456)

Complainant

2. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Rural Circle office,
Malegaon
3. Executive Engineer (UCR)
Divisional Office,
Maharashtra State Electricity Distribution Com. Ltd.
Moti Bhavan, Malegaon, Dist. Nashik

Distribution Company

DECISION

M/s. Vinchurkar-Pawar Diagnostic Centre (hereafter referred as the Complainant). Malegaon Nashik is the LT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance regarding application of the tariff category LT-X from August 2012 . The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. . But not satisfied with the decision of the IGRC , the consumer has submitted a representation to the

Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No. 40 of 2017 on 27/02/2017.

The Forum in its meeting on 28/02/2017, decided to admit this case for hearing on 14/03/2017 at 11.30 am in the office of the forum. A notice dated 28/02/2017 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Rural Circle Office Malegaon for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. S. S. Ade, Executive Engineer, Shri Vipin S. Awhad Additional Executive Engineer represented the Distribution Company during the hearing. Shri. Jayanta Mutha appeared on behalf of the consumer.

Consumers Representation in brief :

१. सदरील जोडणी सन २०१२ मध्ये घेतलेली आहे. या जोडणीची आतापर्यंतची सर्व बीले नियमित अदा केलेली आहेत.
२. वरील जोडणीसाठी घेतलेल्या विजेचा वापर हा बुद्धी, ज्ञान, तंत्रज्ञान व कौशल्य यांचा वापर करून वैद्यकीय व्यवसायासाठी केला जातो.
३. सततच्या संशोधनामुळे प्रत्येक क्षेत्रात वेगाने बदल होवून नवीन अद्यायावत तंत्रज्ञान, उपकरणे यांच्या व्दारे प्रत्येक अवयवाचे आजार रोग निदान व उपचारासाठी स्पेशलायझेथन झालेले आहे. काही हॉस्पिटलमध्ये विविध प्रकारच्या अवयवाचे आजार, रोग निदान व उपचार एकच ठिकाणी केले जातात. अशा ह्या हॉस्पिटलमध्येच पॅथॉलॉजी लॅब, सोनाग्राफी, सी.टी.स्कॅन, एम.आर.आय. वगैरे चाचण्यांची व्यवस्था असते. त्यामुळे आजाराच्या निदानासाठी चाचण्या व उपचार एकाच ठिकाणी होतात. मात्र काहीकडे ही व्यवस्था उपकरणे व तज्ज्ञ नसल्याने यातील तज्ञ डॉक्टर्स विविध चाचण्याव्दारे रोगाचे फक्त निदान करतात व उपचार संबंधीत तज्ञ डॉक्टर्स करतात.
४. हॉस्पिटलमधील आजार, रोग निदान करणा-या (डायग्नोसिस विभागासह) २०१२ पासून सार्वजनिक सेवेसाठी असलेली वीज दराची वर्गवारी LT-X या वर्गवारीच्या दराने आकारणी होते.
५. मात्र ग्राहकाचा वीज वापर कोणत्याही वाणिज्य कारणासाठी होत नाही. हा वीज वापर नागरीकांच्या, जनतेच्या विविधी चाचण्या होवून विविध आजारांचे, रोगाचे निदान करण्यासाठी केला जात असल्याने व Director (Operation), MSEDCL, Mumbai महावितरण कं. चे परिपत्रक कं. १७५ दि. ०५/०९/२०१२ मधील पॅरा नं. ४ नुसार " the field officers will be required to complete exercise of re-categorization within one month आणि अशाप्रकारे it is thus apparent that it is for the Distributing Licensee to reclassify the consumers and should not wait for the consumer to make application for re-classification of the category."
६. ग्राहकाच्याही सार्वजनिक सेवेसाठीच असलेल्या वीज वापराची वर्गवारी LT-X या वर्गवारीच्या वीजदराने LT-II to LT-X w.e.f. 01/08/2012 पासून आकारणी करणे वितरण कंपनीचे कर्तव्य व बंधनकारक होते. यात वितरण कंपनीने भेदभाव करून काही डायग्नोसिस सेटर्सना LT-X ह्या वर्गवारीने दर आकारणी केलेली आहे. मात्र अनेक वेळेस ग्राहकाने मागणी करूनही सार्वजनिक सेवेसाठी असलेल्या LT-X या वीजदराने आकारणी केलेली नाही. याबाबत ग्राहक प्रतिनिधी श्री.

जयंत मुथा यांचा अनुभव असा आहे की, कनिष्ठ कार्यालयाकडून काही तांत्रिक बाबींसाठी नियमांचे स्पष्टीकरण, वगैरेसाठी वरिष्ठ कार्यालयाचे मार्गदर्शन मागीतले जाते. अशावेळेस वरीष्ठ कार्यालयाकडून प्रसंग विधी अधिका-याचे अभिप्राय घेतुन योग्य, संबंधीत कनिष्ठ कार्यालयांना सुस्पष्ट मार्गदर्शन करणे आवश्यक आहे. मात्र अनेक वेळेस वरीष्ठ कार्यालयाकडून कनिष्ठ कार्यालयांना योग्य, स्पष्ट मार्गदर्शन कधीही केले जात नाही. "नियमानुसार कार्यवाही करावी व अहवाल संबंधीतास व या कार्यालयास पाठवावा असे संदिग्ध मार्गदर्शन केले जाते".

७. प्रस्तुत प्रकरणात पण असाच प्रकार झाल्यामुळे हे गा-हाणे निर्माण केलेले आहे. यासाठी वरीष्ठ कार्यालयांनी त्यांची जबाबदारी योग्य रितीने पार पाडल्यास अनेकांना त्रास, साधन सामुग्रीचा अपव्यय टळेल.

RELIEF SOUGHT :

१. सदर वीज वापर सार्वजनिक सेवा Public Services LT-X या वर्गवारीत येत असल्याने आम्हास ऑगस्ट २०१२ पासून या दराने वीज बिलाची आकारणी करावी व आतापर्यंत जादा भरलेल्या रकमेचा परतावा द्यावा.
२. महावितरणकडे जमा असलेल्या तथा ग्राहकास देय असलेली वरील परताव्याची रक्कम ही "अनामत रक्कम नसल्याने" महावितरण कंपनी ग्राहकांना थकवाकीवर ज्या दराने व्याज आकारते त्या दराने वरील परताव्यावर व्याज द्यावे.
३. तक्रारीची दखल /पुर्तता विहित कालमर्यादेत न केल्याने कृती मानकाद्वारे होणारी भरपाई मिळावी.
४. मानसिक, शारिरीक व आर्थिक त्रास व नुकसानीसाठी रु. ५०,०००/-भरपाई मिळावी.
५. केलेल्या कार्यवाहीचा, कॅलक्युलेशनचा तपशील मिळावा.
६. या गा-हाण्यात सुधारणा करण्याचा हक्क मिळावा.
७. ग्राहक हितात मा. मंचास योग्य वाटेल असे आदेश महावितरण कंपनीस द्यावेत.
८. होणारा त्रास, साधन सामुग्रीचा अपव्यय टाळण्यासाठी व कनिष्ठ कर्मचारी व अधिकारी यांना सतत दडपणाखाली काम करावे लागु नये यासाठी संबंधितांनी मार्गदर्शन मागीतल्यास त्वरीत योग्य मार्गदर्शन देण्याचे वरिष्ठ कार्यालयास सुचना द्याव्यात.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 10/03/2017 from the Executive Engineer , MSEDCL, Malegaon Division , Nashik and other relevant correspondence in this case. The Distribution Company stated that:

१. MERC टेरिफ ऑर्डर in the case No. 121 of 2014 for the period from fy 2013-14 to fy 2015-16 नुसार डायग्नोस्टिक सेंटर हे LT-X या वर्गवारीमध्ये आढळुन येत नाही. त्यामुळे ग्राहकास LT-C या वर्गवारीप्रमाणे बिलाची आकारणी होत होती.
२. MERC टेरिफ ऑर्डर in the case No. 48 of 2016 for the period from FY 2016-17 to FY 2019-20 नुसार डायग्नोस्टिक सेंटर हे LT-X या वर्गवारीमध्ये समावेश केलेले असल्याने सध्या ग्राहकास LT-X या वर्गवारीप्रमाणे बिलाची आकारणी होत आहे.

३. तसेच मे. विंचुरकर-पवार डायग्नोस्टिक सेंटर यांच्याकडून वेळोवेळी प्राप्त पत्रांना कार्यालयाकडून योग्य ते उत्तर दिलेले आहे.

Action by IGRC :

1. Internal Grievance Redressal Cell Malegaon Rural Circle conducted hearing on 31/01/2017 for the complaint submitted on 12/01/2017 .
2. After hearing both the parties IGRC gave decision as per letter dated 08/02/17 as under:
"मे. विंचुरकर डायग्नोस्टिक सेंटर, ग्राहक क्रमांक ०६५५१३८४४५६ यांना दि. ०१/११/२०१६ पासून MERC Tariff Order Case No. 48 of 2016 व Commercial Circular No. 275 नुसार LT-X (B) III या टेरिफ प्रमाणे विजदेयक अदा करण्यात यावे "

Observations by the Forum:

1. The complainant is an LT consumer running the activity of "Magnetic Resonance Imaging (MRI)" with sanctioned demand 102 kVA . The complainant was being charged LT II (C) tariff till October 2016 . The tariff category is changed to LT X B with effect from November 2016 in view of the MERC tariff order dated 03/11/2016 [effective from 01/11/2016].
2. But the complainant has demanded that categorization should be changed to LT X - Public Services with effect from August 2012.
3. The historical background of this issue, is as under :
 - ✓ Earlier the Hospitals and Educational Institutions were charged the commercial tariff . But there were certain representations against this by the concerned stake holders.
 - ✓ Later different appeals were filed by the Association of Hospitals, Educational Institutions, Sports Academy and Spiritual Foundations, etc; challenging the orders of Maharashtra State Electricity Regulatory Commission for the Financial Year 2008-09 and the FY 2009-10 to the Hon'ble Appellate Tribunal of Electricity (APTEL) .
 - ✓ One of the appellant Association of Hospital Mumbai challenged creating HT-II Commercial Category/LT Commercial category for the hospitals. In the proceedings on these appeals the APTEL has dealt with the question "*Whether the Hospitals, Educational Institutions dispensaries and other service oriented organisations etc., have to be treated differently under Section 62 (3) of the Act under the head 'purpose for which the supply is required' ?* .
 - ✓ After going through the appeals in detail, the Hon'ble Tribunal passed a Judgement dated 20 October, 2011 and summarized its finding at para 57 of the said judgement as under:
 - i. *The State Commission in the present case wrongly placed all the consumers including the Appellants who were neither domestic nor industrial nor falling under any of the categories under the Commercial Category. The purpose for which the supply is required by the Appellants can not be equated at par with other consumers in the Commercial Category. The Appellants are seeking separate categorisation on the basis*

of purpose for which the supply is required by the Appellants i.e. rendering essential services.

- ii. *The real meaning of expression „“purpose for which the supply is required” as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The Railways and Delhi Metro Rail Corporation have been differentiated as separate category as they are providing essential services. The same would apply to the Appellants as well. (iii) The application of mind should be on identifying the categories of the consumers who should be subjected to bear the excess Tariff recoverable based on a valid reason and justification.*
 - iii. *The re-categorisation of Charitable Hospitals and Charitable Organisations and grouping them with the consumers of the category such as Shopping Malls, Multiplexes, Cinema Theatres, Hotels and other like commercial entities is patently wrong.*
 - iv. *By the impugned order, the State Commission classified the members of the Appellants into “Commercial” category following a mechanical approach. This has been done only because the Appellants cannot fall under either in the industrial or agricultural or residential category and therefore, the Appellant would automatically fall in the Commercial Category. This is not a proper approach. In case the State commission felt that the Appellants are not falling under any particular existing category, then the State Commission ought to have applied its mind and provided for a new category and given them a competitive Tariff having regard to the purpose for which the electricity is used by them.*
 - v. *The State Commission may classify the hospitals, educational institutions and spiritual organisations which are service oriented and put them in a separate category for the purpose of determination of Tariff.”*
 - vi. *We feel that the re-categorisation should be implemented by the State Commission in the next Tariff Order which is yet to be passed for the following reasons.....”*
4. On this background , a new category called "Public Services" in the MERC tariff order dated 16 August 2012 in case no. 19/2012 [operative from 01/08/2012] in both LT and HT was created. The category was named as LT-X and further subdivided into three groups depending on the load as under:

LT X: LT- Public Services [(A) 0-20 kW, (B) >20 kW and <= 50 kW (C) >50 kW]

Applicability

This Tariff shall be applicable to Education Institutes, Hospitals, Dispensaries, Primary Health Care Centers, Pathology Laboratories, Police Stations, Post Offices, Defence Establishments (Army, Navy and Air Force), Public Libraries and Reading Rooms, Railway except Traction (Shops on the Platforms/Railway Station/Bus Stands will be billed under Commercial category as per the

respective slab), State Transport Establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to aeronautical operations) Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is exclusively meant for the students / patients of such Educational Institutions & Hospitals.

There is no clear mention of the "Diagnostic Centre" in this tariff order hence category of LT-X was not applied to them by the Distribution Company in some cases and the old categorisation continued.

5. Later the MERC issued new tariff order dated 26/06/2015 in case no. 121 of 2014 (operative from 01/06/2015). In this order the Commission has further bifurcated the public services (LT X) into two subcategories like activities run by the Government and run by others (private/non-government) providing different rates of electricity charges. **LT X (A)** broadly covers **Government Educational Institutes and Hospitals** and LT X-(B) covers public services by others (i.e. in private/non-government sector). The details are as under:

LT X (A): LT - Public Services - Government Educational Institutes and Hospitals:

Applicability:

This Tariff shall be applicable to all Educational Institutions, such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms of State or Central Government, Local self Government bodies such as Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat. Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students / faculty/employees/patients of such Educational Institutions and Hospitals.

LT X (B): LT - Public Services - Others :

Applicability: This Tariff shall be applicable to Educational Institutions such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms other than those of State or Central Government, Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat; all offices of Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad, and Gram Panchayat; Police Stations, Police Chowkies, Post Offices, Defence establishments (army, navy and air-force), Spiritual Organisations which are service oriented, Railway/Monorail/Metro except traction, State transport establishments; and State Transport Workshops, Transport Workshops operated by Local Authority, Fire Service Stations, Jails, Prisons, Courts, Airports (only activity related to aeronautical operations), Ports, Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution /Hospital provided said Sports Club / Health Club / Gymnasium /

Swimming Pool is situated in the same premises and is primarily meant for the students /faculty/ employees / patients of such Educational Institutions and Hospitals.

6. In the same MERC tariff order dated 26 June 2015, HT -IX tariff is made applicable the Public Services availing HT supply which is bifurcated to HT -IX (A) and HT -IX (B) as under:

HT IX (A): HT - Public Services - Government Educational Institutes and Hospitals

Applicability

This Tariff shall be applicable to all Educational Institutions such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Diagnostic Centres/ Pathology Laboratories and Libraries and Public reading rooms of State or Central Government, Local self Government bodies such as Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat.

Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium /Swimming Pool is situated in the same premises and is primarily meant for the students /faculty/ employees/ patients of such Educational Institutions & Hospitals.

HT IX (B): Public Services - Others:

Applicability: This Tariff shall be applicable to education institutions, hospitals, dispensaries, primary health care centres, pathology laboratories etc which are not covered in HT IX (A), Spiritual Organizations Police Stations, Post Offices, Defence establishments (army, navy and air force), Public libraries and Reading rooms, Railway / Metro / Monorail except traction, State transport establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to aeronautical operations), Pumping of Water for Tankers, Public Gardens owned by Local Self Government Bodies such as Gram Panchayat, Municipal Council/Corporation.

Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students / faculty/employees/patients of such Educational Institutions & Hospitals.

A plain reading of the above reveals that the Educational Institutions and Hospitals (with other related medical services such as Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries) have been considered as "Public Services" for the purpose of tariff. HT -IX (A) tariff is applicable to Government Diagnostic Centres having HT power supply. However the words "Diagnostic Centres" are missing in this list given below LT -X(A) . It does not mean that the Government Diagnostic Centres having LT power supply is not a public service.

7. The **Magnetic Resonance Imaging (MRI)** is a diagnostic technique that uses magnetic fields and radio waves to produce a detailed image of the body's soft tissue and bones. An MRI Centre provides also a medical service similar to the Pathological Laboratory which is "a medical specialty that diagnoses the cause and nature of diseases. Pathology involves examining and testing body tissues from biopsies and bodily fluids from samples including blood and urine."

✓ **Diagnosis is** "The act or process of identifying or determining the nature and cause of a disease or injury through evaluation of patient history, examination, and review of laboratory data."

✓ Diagnosis can be based on Clinical Test (based on symptoms) Pathological Test (based on testing body tissues and fluid) and MRI Scan (based on radiological tests of body's soft tissue and bones) .

✓ Hence medically the objective of both MRI Centre and Pathological Laboratory are the same.

As interpreted by the Hon'ble ATE in its above mentioned order dated 20/10/2011 " The real meaning of expression „ "purpose for which the supply is required" as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity."

8. The list of "Public Service" indicated in the tariff orders dated 16 August 2012 and dated 26 June 2015 , can not be taken as "exclusive" . The list can not be exhaustive to include all the activities falling in this category . We will have to go by the "letter and spirit" behind this classification. For example a "Naturopathy Centre" , has to be classified under LT-X or HT -X category treating it as "hospital" as this activity also involves *treatment of diseases (that avoids drugs and surgery) with the use of natural agents such as air, water, and herbs and physical means* Hence It can not be denied this tariff merely because the activity is not specifically mentioned in the list. In this regard the Hon'ble Commission in its order dated 16 July 2013 in case 118/2012 has clearly ruled as under:

"..... However, the Commission would like to clarify that it is a duty cast on the Licensee to implement each and every Order of the Commission in its letter and spirit. In case, licensee has any doubt about interpretation of the Order of the Commission, they should file clarification Petition before the Commission for correct implementation of the Order....."

9. The Regulation 13 of the MERC Supply Code, 2005 is as under:

13. Classification and Reclassification of Consumers into Tariff Categories:

The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

Actually this regulation empowers the Distribution Company to classify a consumer into an appropriate tariff category already approved by the Commission. It does not allow the Distribution Company to create a new tariff category but casts the responsibility on it to identify a tariff category for a consumer based on its proper interpretation. This work can not be just mechanical involving

only matching the words used in the order but may need application of mind to interpret the "letter and spirit" behind the classification.

10. There may not be mention of a specific activity but it can be of similar nature to other activities mentioned. The Hon'ble Supreme Court in (1976) 2 SCC 310 in the judgement of State of Kerala Vs. N M Thomas has held that if there is intelligible differentia which separate a group within that class from the rest and that differentia has nexus with the object sought to be achieved, there can be further classification. The relevant portion of the judgement is extracted below:

"83. A classification is reasonable if it includes all persons who are similarly situated with respect to the purpose of the law."

11. As mentioned in the representation by the complainant has submitted bills of the following consumers from other districts carrying MRI activity which are classified under LT-X (Public Services) category by the MSEDCL :

| Name | District | Consumer No. | Date of Supply | Category |
|--|------------|--------------|----------------|----------|
| 1. Chikitsa Diagnostic & Research Centre | Ahmednagar | 162018600731 | 03/12/1996 | LT-XB |
| 2. Shri Vinchurkar Narayan Ganpat | Nashik | 049019019750 | 20/03/2006 | LT-XB |
| 3. Dr. Girish Dadasaheb Dhadwad. | Nashik | 049016801614 | 04/12/2003 | LT-XB |

12. The complainant has also referred to an order dated 04/09/2015 (Representation no. 54/2015) from the Hon'ble Electricity Ombudsman, Nagpur in respect of M/s. Tapadia Diagnostic Centre, Aurangabad in a similar case.

In this case the Distribution Company had applied HT-II tariff to the Diagnostic Centre. In view of the new category called 'public services' in LT and HT created under MERC Tariff Order dated 16.8.2012 in Case No. 19/2012 applicable w. e. f. 1.8.2012, the Distribution Company was directed by the Hon'ble Electricity Ombudsman, Nagpur as under:

"

- c. *The respondent is directed to change the Tariff Category of the appellant from HT-II (N) to HT-IX from 1.8.2012.*
- d. *The respondent is further directed to revise the bills of the appellant from 1.8.2012 onwards and to refund the surplus amount, if any, alongwith interest under Section 62 (6) of the Electricity Act, 2003 equivalent to Bank Rate."*

13. In an another order dated 02/09/2015 (Representation no.36/2015) by the Hon'ble Electricity Ombudsman, Nagpur in respect of Dr. Kavita Dhanraj Muley, Udgir , District Latur having the same grievance , it has been directed that :

*".....It may be recalled that a new category called 'public services' in LT and HT has been created under MERC Tariff Order dated 16.8.2012 in Case No. 19/2012 applicable w. e. f. 1.8.2012. This tariff is applicable amongst other things to Hospitals, Dispensaries, Primary Health Centers, Pathology etc. By way of Guidelines for implementation of the said Tariff Order, Commercial Circular No. 175 dated 5.9.2012 was issued by the Director (Operation), MSEDCL, Mumbai. Para No. 4 of the said Circular is relevant. At the end of para 4, it is mentioned that **the field officers will be required to complete exercise of re-categorization within one month.** It is thus apparent that it is for the Distributing Licensee to reclassify the consumers and should not wait for the consumer to make application for re-classification of the category. Thus, the respondent was obliged to change the category of the appellant from LT-II to LT-X A w. e. f. 1.8.2012. It, therefore, follows that the respondent should change the Tariff Category of the appellant from LT-II to LT-X A w. e. f. 1.8.2012, shall revise the bills from 1.8.2012, shall refund the surplus amount, if any, with interest."*

14. Hence the Forum concludes that the activity of MRI Centre has to be considered as "Public Service" and the tariff LT-X should be made applicable to the complainant with effect from 01/08/2012.
15. The prevailing MERC tariff order dated 03/11/2016 (in case no. 48 of 2016) makes a clear mention of the words "Diagnostic Centres" both in LT-X (A) and LT-X (B) categories. Hence there is no issue after November 2016. The issue is regarding application of the appropriate tariff category from August 2012 to October 2016.
16. It is seen that the complainant first time pointed out the error by a letter dated 16/12/2015 (received on 21/12/2015) to the Superintending Engineer, Nashik for correction in the tariff category since August 2012 and refund. As the request was rejected by a letter dated 30/03/2016 from the Additional Executive Engineer, Malegaon., the complainant submitted the grievance to the IGRC, Nashik Urban Circle by an application dated 12/01/2017.
17. The cause of grievance has in fact arisen in August 2012 and continued till October 2016. However the complainant submitted the grievance in this regard first time in December 2015 after more than 3 years from the cause of grievance. It is also relevant to refer to the judgment dated 19th January, 2012 of the Bombay High Court in W.P. No. 9455 of 2011 in the matter of M/s. Hindustan Petroleum Corporation Limited V/s. MSEDCL. Hon'ble High Court after considering the relevant provisions of CGRF Regulations has held that cause of action of submitting grievance to the Forum arises when the IGRC does not redress the grievance. Hence, the cause of action starts after the decision of IGRC. The Forum has therefore admitted the grievance, though the cause of action is more than 2 years old.
18. In view of this, the Forum directs the Distribution Company to apply the LT-X tariff category from August 2012 upto May 2015 and LT-X (B) tariff category from June 2015 till October 2016 and refund excess amount collected from the complainant during August 2012 to October 2016 along with interest at the bank rate under Section 62 (6) of the Electricity Act, 2003 should be paid on the amounts of refund till the date of refund.

19. The complainant has demanded the compensation for not taking cognizance of the complaint. But it is seen that the first letter dated 16/12/2015 by the complainant was responded by a letter dated 30/03/2016 from the Additional Executive Engineer, Malegaon. Hence it can not be said that the Distribution Company has not acted upon the complaint.
20. The complainant has demanded compensation for mental and physical agony and the financial loss . But the Forum can not approve this as the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 do not provide for any such compensation.
21. The complainant has raised a point regarding not getting clear and timely guidance for the reverences made by the field offices to the head office . This is internal administrative matter of the Distribution Company. The Forum can not give any directive to the Distribution Company in this regard. However it should be noted that the grievance redressal mechanism is established for such cases. Any consumer aggrieved by such a delay or clarity can take recourse to this mechanism and the Forum can decide the case on merit.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should apply the LT-X tariff category from August 2012 upto May 2015 and LT-X (B) tariff category from June 2015 till October 2016 and refund excess amount collected from the complainant during August 2012 to October 2016 along with interest at the bank rate under Section 62 (6) of the Electricity Act, 2003 on the amounts of refund till the date of refund.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .
3. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.

4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Sandeep D. Darwade)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. ,
Rural Circle office, Malegaon .